

**REMARKS**

The Amendment, filed in response to the Office Action “(Action”) mailed October 16, 2008, is believed to fully address all and each issue raised in the Action. Favorable reconsideration of the application is respectfully requested.

Applicants thank the Examiner for withdrawing previous rejections in view of Applicant’s argument filed August 13, 2008.

Applicants further thank the Examiner for entering and considering new claim 8.

**I. Status of Claims**

Claims 1-8 are pending in the application, and all the claim are rejected in the Action.

Claims 1 and 4 are amended to replace the term “discharger” with the term “container.” Support for the amendment can be found, for example, at page 5, line 21 of the present specification.

The present amendments to the claims are made only to overcome the § 112 rejections, written description rejection, and the term “container” is described in the specification. As such, it is believed that no new consideration or search is required, and thus, entry of the Amendment after a Final Office Action is respectfully requested.

**II. Response to Claim Rejection Under 35 U.S.C. § 103(a)**

Claims 1-8 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Castenmiller (U.S. Patent No. 4,874,626) in view of Clapp et al. (U.S. Patent No. 5,156,876) and Sejpal et al. (U.S. Patent No. 3,849,580).

Applicants respectfully traverse, at least for the following reasons.

Present claim 1 recites a foamable composition comprising a water-in-oil type emulsion. The foamable composition is contained in an aerosol container, and the container comprises a gas propellant partially dissolved in the water-in-oil emulsion. The container further has a discharging nozzle for discharging the composition with the gas propellant as a foam and the foam is formed at the time of jetting.

Although Castenmiller discloses using a water-in-oil type emulsion and emulsifier in combination, Castenmiller uses plastified fat (including solid fat such as hardened oil and hydrogenated oil). In contrast, in the present invention, it is possible to form a mousse using a water-in-oil emulsion, without the necessity of crystallized fat. Furthermore, applicants note that the amount of emulsifier employed in Castenmiller, if used in the claimed composition, would not result in the formation of a mousse. Additionally, at page 5 of the Office Action, the Examiner admits that Castenmiller does not disclose the use of a propellant dissolved in the emulsion. To cure the deficiencies in Castenmiller, the Examiner relies on Clapp and Sejpal.

In this regard, Applicants respectfully submit that one skilled in the art would not have added a propellant to pre-formed foam composition for the following reasons:

(1) there is no need to pressure-dissolve expandable gas (propellant) into a composition which already holds an optimal amount of bubbles to further involve bubbles in the composition; and

(2) it is predicted that, if a pre-foamed composition which already holds bubbles in an optimal ratio is packed in a pressurized container together with a propellant and dispensed, bubbles generated due to excess foam formation cannot be held and the composition itself spatters.

Turning into individual references, the Examiner asserts that Clapp discloses a parting composition for cooking foodstuffs including a pressurized hydrocarbon propellant. However, Clapp does not disclose the discharging of the composition of Clapp in a foam form. Specifically, at column 5, lines 19-20, Clapp discloses that small amounts of ethanol may be added to the composition in order to control foaming, from which it can be reasonably implied that formation of a foam composition is not the intended invention. Additionally, based on working Example 4 of Clapp it appears that the invention of Clapp is intended for use as a non-stick spray for cooking purposes and not for the formation of a foamable composition comprising water-in-oil type emulsion or a foamable edible oil composition where the foam is formed at the time of jetting, as in the present invention. Therefore, one skilled in the art who reads the teachings of Clapp would not have been taught away from including pressurized hydrocarbon propellant into a foamable water-in-oil type emulsion or emulsified edible oil composition of the present invention. Turning to Sejpai, the reference discloses an aerosol dispensing system which delivers non-aqueous butter-like anhydrous edible fat compositions in a foam form on a predetermined surface. Further, at column 1, lines 45-50, Sejpai discloses that the formulations of Sejpai are distinctive because they are non-emulsified foams, and because they have no aqueous constituents. In contrast, the invention of Castenmiller is an emulsion containing a fat-phase and an aqueous phase. Therefore, it is believed that one skilled in the art would not have been motivated to combine Castenmiller and Sejpai.

Furthermore, Sejpai uses an anhydrous edible fat composition having a solid fat index of 5 to 30 percent at 70°F, and it does not contain an emulsifier as in the present invention.

Additionally, in Sejpal, foam is stabilized by a network of the edible fat. However, according to the present invention, the composition is a water-in-oil emulsion and it is possible to form a mousse without any edible fat.

In conclusion, Clapp teaches one skilled in the art away from including a pressurized propellant in a formable emulsion.

And, one skilled in the art would not have been motivated to combine the teachings of Castenmiller, which is directed to an emulsion containing a fat-phase and an aqueous phase, with the teaching of Sejpal, which is directed to non-aqueous (or anhydrous) fat composition.

In view of the above, claim 1 is patentable over the combination of Castenmiller in view of Clapp and Sejpal. Claims 2-8 are also patentable based on their dependence from claim 1. Therefore, reconsideration and withdrawal of the § 103 rejection are respectfully requested.

AMENDMENT UNDER 37 C.F.R. § 1.116  
U.S. Appln. No.: 10/539,445

Attorney Docket No.: Q88710

Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

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